

IN THE MATTER OF MERCANTILE SEAMAN'S DOCUMENTS NO. Z-1134938 AND ALL  
Issued to: Henry J. VEDDER

DECISION OF THE COMMANDANT  
UNITED STATES COAST GUARD

1581

Henry J. VEDDER

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 4 June 1964, an Examiner of the United States Coast Guard at Long Beach, California, revoked Appellant's seaman's documents upon finding him guilty of misconduct and incompetent.

Two charges were brought against Appellant, one of "Misconduct," one of "Incompetence." Both charges were found proved. In view of my opinion of this matter, expressed below, no further analysis of the proceedings is necessary at this time.

OPINION

The second charge in this case was one of incompetence. The specification alleged that Appellant was on or about 19 March 1963 and was still at the time of hearing "incompetent, physically and/or mentally, to perform the duties of a merchant seaman." This specification was found proved.

The deficiencies in the pleading could easily have been corrected by proper findings. The finding that the specification was proved leaves me with only a puzzle on appellate review.

Was Appellant found to be mentally incompetent only?

Was Appellant found to be physically incompetent only?

Was Appellant found to be both mentally and physically incompetent?

An "and/or" finding is not a "finding."

CONCLUSION

Since I cannot enter a final decision on appeal without answer to the questions raised, the case must be remanded. Since I have not had occasion to pass upon the findings as to "Charge One:

Misconduct," no further action is presently required on that score.

I note here that Appellant, who failed to comply with an order to submit to examination at the time of hearing, indicates that "he is ready, willing, and eager to submit himself to any physical or psychiatric examinations that may be suggested." It may well be that Appellant, on remand, may comply with the Examiner's order.

### ORDER

The order of the Examiner is SET ASIDE. The findings of the Examiner as to "Charge Two: Incompetence" are SET ASIDE. The matter is REMANDED to the Examiner for the entry of such findings as will eliminate the "and/or" deficiency in the findings and for other proceedings consistent herewith.

P. E. TRIMBLE  
Vice Admiral, United States Coast Guard  
Acting Commandant

Signed at Washington, D. C., this 31st day of August 1966.

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